CORPORATIONS — CORPORATE POWERS AND THEIR EXERCISE — POWER OF CORPORATION TO PURCHASE ITS OWN SHARES — PURCHASE FROM SURPLUS ASSETS OF CORPORATION.— The plaintiff, a shareholder in a New York corporation, sold his shares to the corporation and received a note in payment. At the time of the transaction the corporation was solvent and probably had a surplus sufficient to pay for the stock, but when the note matured after a renewal, the corporation was insolvent. The plaintiff seeks to prove for the note in bankruptcy proceedings. *Held*, that even if the corporation had a surplus when the note was given, the holder will be postponed to general creditors. *In re Fechheimer-Fishel Co.*, 50 N. Y. L. J. 2853 (C. C. A., 2nd Circ.).

For a discussion of the power of a corporation to purchase its own shares, see page 747 of this issue of the REVIEW.

CORPORATIONS — DISTINCTION BETWEEN A CORPORATION AND ITS MEMBERS — VALIDITY OF ASSIGNMENT FROM ONE CORPORATION TO ANOTHER COMPOSED OF SAME SHAREHOLDERS.— The defendants fraudulently caused corporation A. to issue paid-up stock to themselves in exchange for overvalued property. While still ignorant of the fraud, A. conveyed all its assets to corporation B., which issued its own stock to A.'s stockholders. B. now sues the defendants in equity for an account of the profits of the original sale. *Held*, that B. cannot recover, as A.'s right to sue was not assignable. *United Zinc Companies* v. *Harwood*, 103 N. E. 1037 (Mass.).

Unless demanded by principle, this decision is unfortunate. A suit by corporation A. may be impracticable. Further, if any of B.'s stock has changed hands, a recovery by A. would not inure to the benefit of the present holders who in justice would be entitled to the proceeds. It might well be argued that the case is incorrect in holding that A.'s right to recover profits was not assignable. *Byxbie* v. *Wood*, 24 N. Y. 607; *cf. Cheney* v. *Gleason*, 125 *Mass.* 166. See POMEROY, REMEDIES AND REMEDIAL RIGHTS, 2 ed., §§ 144-153. But this misses the root of the difficulty, since the *ratio decidendi* of the case would lead to the same objectionable result if the claim was one of the class generally recognized as nonassignable. *Cutting* v. *Tower*, 14 Gray (Mass.) 183; *Illinois Land Co.* v. *Speyer*, 138 Ill. 137, 27 N. E. 931; *Milwaukee & Minnesota R. R. Co.* v. *Milwaukee & Western R. R. Co.*, 20 Wis. 174. Ever since a power to sue in another's name and retain the proceeds has been legally possible, there has been no solid objection to the assignment of any litigious claim — not for personal injuries — except the policy against champerty and maintenance. See *Prosser* v. *Edmonds*, 1 Younge & Collyer, 481, 497; *Rice* v. *Stone*, 1 Allen (Mass.) 566, 568; 3 POMEROY, EQUITY, §§ 1275, 1276. But an assignment which leaves the ultimate benefit of a suit where it was, does not promote strife. A court would scarcely refuse to remove one trustee and appoint another merely because some litigious right had become part of the trust-estate. And the court need violate no principle of corporation law to recognize the analogy here. Unquestionably, two corporations composed of the same shareholders are different persons for most purposes. They have different sets of rights, the act of one is not the act of the other, and the obligations of one are not enforceable against the other's property. But two entities may be distinct in respect to all these elements of personality, and yet be guided by a single mind, as where one individual holds two offices, or by a single group of minds, as here. It is not necessary, in order to preserve the real distinctions between the two corporations in the principal case, to insist on other distinctions which are not real. So far as their capacity to desire and enjoy benefits is concerned, they are the same. A distinction in this respect is really fictitious, and should be disregarded. *Washington Insurance Co.* v. *Price*, 1 Hopk. (N. Y.) 1; *United States* v. *Milwaukee Refrigerator Transit Co.*, 142 Fed. 247.